IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.371 OF 2007

M/s.Laxmi Builders .. Petitioner

Versus

Shobha Ravi & Ors. .. Respondents

Mr.Bhavesh Parmar for petitioner.

Mr.A.G.Damle for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 5th October, 2007.

P.C.:

1. This arbitration petition is by a Developer, who states that certain rights were created by Kamlabai B. More in his favour in respect of an Immovable Property of which she is the owner. She has expired and the respondents are intermeddling with her estate but denying the benefits under the subject Agreement, to the petitioner-developer.

2. Mr.Damle, appearing for the respondents states that once the Agreement is in the nature of development,

then, no rights in favour of the petitioner flow from such an arrangement. The Arbitral Tribunal would determine the quantum which would be payable, more so, when the respondents are ready and willing to refund the sum of Rs.2,50,000/-.

3. In my view, at this stage, it is not fair and proper to go into the rival contentions on the merits of the controversy. More so, when Mr.Parmar, appearing for the petitioner states that the petitioner would apply for appointment of the Sole Arbitrator and an application under Section 11 of the Arbitration and Conciliation Act, 1996 would be filed in case there is no response to the notice for appointment. The nature of the rights flowing from the Agreement, copy of which is at Annexure "A" & "B" is something for the Arbitral Tribunal to decide. However, in their reply to the correspondence and more particularly, a letter addressed by the Advocate appearing for the petitioner, the respondents stated that they would induct any person / developer and had threatened that they would complete the conveyance.

4. Mr.Damle, appearing for the respondents, on instructions states that no conveyance has been executed till date. An order in terms of prayer clause (d),

restraining the respondents has been passed on 22nd August, 2007 and the same is continuing till date. When the conveyance has not been executed, all that can be directed is continuation of the order passed by this Court till the Arbitrator makes his Award. Accordingly, ad-interim order to continue subject however to the respondents continuing their negotiations with the third party. However, the respondents not to execute a conveyance in favour of such third party until the arbitration proceedings are concluded. All contentions of both sides on merits of the controversy are expressly kept open and the Arbitrator to decide the same uninfluenced by the observations in this order or the interim measures, provided therein. Arbitration petition disposed of.

5. Needless to clarify that the respondents are not restrained from entering into any Agreement but they shall not transfer and convey their right, title and interest in the property to any third party.

(S.C.Dharmadhikari, J.)